

**REMARKS**

Claims 1-8, 10, 12-33, 35-40, 42, and 44-74 are pending upon entry of this Amendment And Response to Office Action After RCE. Claims 1, 32, 62 and 70 have been amended herein to more particularly claim certain embodiments of the invention. Specifically, claims 1, 32, 62 and 70 have been amended to require the moisturizing and lubricating composition to be at least about 40% soluble/dispersible in deionized water at a temperature of about 80°C. Support for these amendments can be found in the instant specification at paragraph [0043]. New claims 71-74 have been added to require the absorbent product of claims 1, 32, 62 and 70, respectively, to comprise from about 15% to about 20% by weight of the compatibilizing agent. Support for these claims can be found in the instant specification at paragraph [0081], Tables 1-5. No new matter has been added by these amendments.

**1. Rejections under 35 U.S.C. § 103(a) over Vega, et al.**

Reconsideration is requested of the rejection of claims 1-8, 10, 12-23, 25-33, 35-40, 42, 44-56, 58-61, and 62-70 under 35 U.S.C. § 103(a) as being unpatentable over Vega, et al. (U.S. Patent No. 6,153,209).

Claim 1, as amended herein, is directed to an absorbent product comprising an absorbent substrate and a moisturizing and lubricating composition. The moisturizing and lubricating composition comprises from about 1% (by weight) to about 40% (by weight) of an emollient, from about 1% (by weight) to about 20% (by weight) of a humectant, from about 30% (by weight) to about

90% (by weight) an immobilizing agent, and from about 1% (by weight) to about 40% (by weight) of a compatibilizing agent wherein no more than about 50% (by weight) of the components are liquid at room temperature and no less than about 50% of the components are solid at room temperature, and wherein at least about 85% (by weight) of the components of the moisturizing and lubricating composition form a single phase at a temperature of from about 45°C to about 80°C. The immobilizing agent is a high molecular weight polyethylene glycol having the formula:  $H(OCH_2CH_2)_xOH$ , wherein x is the degree of ethoxylation and is an average value of at least about 20 moles. The moisturizing and lubricating composition is at least about 40% soluble/dispersible in deionized water at a temperature of about 80°C.

Vega, et al. is directed to absorbent articles having a skin care composition deposited on at least a portion of the article. The skin care composition is a breathable, barrier protectant which can be immobilized on the article and is transferable to the wearer's skin via contact, normal wearer motion, and/or body heat. The skin care composition may comprise an emollient in an amount of from about 5 to about 95 wt.% of the skin care composition; an immobilizing agent in an amount of from about 5 to about 95 wt.% of the skin care composition, and optionally a humectant. Vega, et al. state that the compositions preferably fully melt at a temperature significantly above room temperature, and typically are applied to the article by heating the composition to a temperature in the range from about 35°C to about 150°C prior to application.

Vega, et al. also state that the compositions preferably have a melt profile wherein 2-50% of the composition is liquid at room temperature (20°C).

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. § 2142 requires a clear articulation of the reasons why the claimed invention would have been obvious. Specifically, the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385, 1396 (2007) noted that the burden lies initially with the Office to provide an explicit analysis supporting a rejection under 35 U.S.C. 103. "[R]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."<sup>1</sup> The Court in *KSR International* further identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Specifically, as previously required by the TSM (teaching, suggestion, motivation) approach to obviousness, one exemplary rationale indicated requires some teaching, suggestion, or motivation in the prior art reference that would have led one of ordinary skill to modify the prior art reference to arrive at the claimed invention. Specifically, to reject a claim based on this rationale, the Office must articulate the following: (1) a finding that there was some teaching, suggestion, or motivation, either in the reference itself or in

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<sup>1</sup> In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings to arrive at each and every limitation of the claimed invention; (2) a finding that there was reasonable expectation of success; and (3) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness. The Office has failed to meet its burden under number (1) above, as the cited reference fails to show each and every limitation of Applicants' invention and there is no apparent reason for one skilled in the art to modify the reference to arrive at each and every limitation. It simply would not have been obvious to one skilled in the art to arrive at Applicants' claimed combinations.

Applicants respectfully submit that Vega, et al. fail to disclose a composition comprising the specific combination of an immobilizing agent that is a high molecular weight polyethylene glycol having the formula:  $H(OCH_2CH_2)_xOH$ , wherein x is the degree of ethoxylation and is an average value of at least about 20 moles, from about 1% (by weight) to about 40% (by weight) of a compatibilizing agent, and the levels of solubility/dispersibility in 80°C deionized water. Applicants further submit that there is no motivation in Vega, et al. to arrive at such a composition.

The Office has cited to column 26, lines 6-7 of Vega, et al. as disclosing Applicants' claimed immobilizing agents. However, the PEGs listed in this passage are disclosed as being useful humectants and are **not all high molecular weight PEGs** as

required in Applicants' claim 1. In particular, Vega, et al. disclose PEG-2, PEG-3, PEG-30, and PEG-50. Specifically, PEG-2 and PEG-3 are clearly not high molecular weight polyethylene glycol having the formula:  $H(OCH_2CH_2)_xOH$ , wherein x is the degree of ethoxylation and is an average value of at least about 20 moles, as required by claim 1.

Further Vega, et al. fail to make a distinction between the polyethylene glycols; that is, there is no teaching that their higher molecular weight polyethylene glycols are more preferred or provide any advantage to the composition as compared to using their lower molecular weight polyethylene glycols. Accordingly, there is no teaching to one skilled in the art to select the higher molecular weight polyethylene glycols (e.g., PEG-30 and PEG-50) over the lower molecular weight polyethylene glycols (e.g., PEG-2 and PEG-3).

Moreover, Applicants maintain that Vega, et al. fail to disclose a composition comprising from about **1% (by weight) to about 40% (by weight) of a compatibilizing agent** and a composition **at least about 40% soluble/dispersible in deionized water at a temperature of about 80°C**. The Office has cited column 26, line 5 of Vega, et al. as disclosing compatibilizing agents. As the Office has correctly noted, Vega, et al. do disclose that their compositions may comprise propylene glycol, butylene glycol, and certain low molecular weight polyethylene glycols (e.g., PEG-2, PEG-3, etc.),<sup>2</sup> which may be considered compatibilizing agents.<sup>3</sup> Vega, et al., however, fail to teach or

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<sup>2</sup> See Vega, et al. at col. 26, lines 5-7, and col. 27, lines 48-49.

<sup>3</sup> See specification at [0067].

suggest the amounts of these agents that may be present in the compositions described therein, and in particular, fail to teach or suggest compositions comprising from about 1% (by weight) to about 40% (by weight) of these compounds or of compatibilizing agents generally.

In Response to Applicants' arguments, citing In re Aller<sup>4</sup>, the Office has stated that although Vega, et al. fail to mention the amounts of components such as propylene glycol, butylene glycol, and certain low molecular weight polyethylene glycols, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. Specifically, "wherein the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation."

In the interests of brevity, Applicants will not recite their entire argument from their previous response, however, as discussed in the summarizations below, for the reasons set forth in their previous response, Applicants maintain that Vega, et al. fail to recognize these components as compatibilizing agents, and further, **fail to even recognize the need for any compatibilizing agents.**<sup>5</sup> In particular, Vega, et al. merely list propylene glycol, butylene glycol, and certain polyethylene glycols as suitable humectants for use in their compositions.<sup>6</sup> Alternately, Vega, et al. state that propylene glycol and polyethylene glycols are suitable solvents for preservatives

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<sup>4</sup> 220 F2d. 454, 456; 105 USPQ 233, 235 (CCPA 1955).

<sup>5</sup> See Response to Office Action, dated October 29, 2008.

<sup>6</sup> See Vega, et al. at col. 26, lines 3-7.

that may be included in the compositions.<sup>7</sup> Accordingly, while one skilled in the art may be able to optimize the amount of humectant to incorporate into the compositions of Vega, et al. based on the disclosure therein, one skilled in the art would not and could not be motivated to determine a suitable amount of compatibilizing agent for inclusion in the compositions of Vega, et al. given the lack of teaching or recognition of the benefits of doing so.<sup>8</sup>

Moreover, the Office has not cited anywhere where Vega, et al. cite any levels of solubility/dispersibility, let alone the specific levels and temperature of Applicants' claim 1. Specifically, at the levels of solubility/dispersibility in 80°C deionized water disclosed in Applicants' claim 1, the moisturizing and lubricating composition is sufficiently hydrophilic to provide the intended benefits of the present invention. Only with the specific combination of components and their claimed ranges as set forth in claim 1 is one having ordinary skill in the art able to obtain the required levels of solubility/dispersibility in 80°C deionized water. This is important, as the more soluble or dispersible a composition is in water, the more hydrophilic the composition. Hydrophilic

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<sup>7</sup> See Vega, et al. at col. 27, lines 48-49.

<sup>8</sup> In the Response to Arguments section, the Office has stated that Vega recognizes the need for ingredients referred to by Applicants as "compatibilizing agents." Applicants note that the lack of disclosure in Vega, et al. of the benefits of compatibilizing agents is relevant to the foreseeability of modifying the amounts of propylene glycol, butylene glycol, or low molecular weight polyethylene glycol that could optionally be included in the Vega, et al. compositions. As pointed out in the above passage, one skilled in the art would not be motivated to optimize the amounts of propylene glycol, butylene glycol, or low molecular weight polyethylene glycols that are suitable for compatibilizing, as that use is not disclosed in Vega, et al.

moisturizing and lubricating compositions for use on the bodyfacing surface of absorbent products introduce a higher level of moisture onto the skin or mucosal area, and retain the moisture in that area. As such, it is preferred that the moisturizing and lubricating composition of the present invention have a high degree of solubility/dispersibility in heated water.<sup>9</sup> Significantly, Vega, et al. fail to disclose any level of solubility/dispersibility in a moisturizing and lubricating composition or the desire for any specific levels of solubility/dispersibility; and, as a result, do not disclose or suggest the specific combination of components and their claimed ranges required to arrive at said level of solubility/dispersibility as set forth in Applicants' claim 1. Accordingly, Vega, et al. fail to disclose or suggest each and every element of Applicants' claim 1 as required for a *prima facie* case of obviousness.

Additionally, Applicants note that in order to arrive at Applicants' claim 1, one skilled in the art must pick and choose from a myriad of options in the Vega, et al. reference, without any guidance as to which options to choose to arrive at Applicants' claim 1. At a minimum, one skilled in the art must choose, without the benefit of Applicants' disclosure as a blueprint, two optional embodiments from Vega, et al. and combine these optional embodiments into a single embodiment.

Specifically, one skilled in the art would have had to first decide to include propylene glycol, butylene glycol, or certain low molecular weight polyethylene glycols into the

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<sup>9</sup> *Id.* at [0041]-[0043].



composition, all of which are listed in Vega, et al. as optional components in the compositions of Vega, et al.; specifically as suitable humectants or in the case of propylene glycol and polyethylene glycols, also as solvents for preservatives. After deciding to include one or more of these optional components, one skilled in the art would then have to determine the amount of propylene glycol, butylene glycol, or certain low molecular weight polyethylene glycols to include into the composition. However, as noted above, Vega, et al. do not disclose that any of these agents may be used as compatibilizing agents, or disclose the need for compatibilizing agents in general. Thus, the optimization of amounts for these agents as compatibilizing agents must be done with no guidance by Vega, et al. as to what should be optimized.

One skilled in the art would then have to decide to select an immobilizing agent from a laundry list of thirteen patents and applications listed by Vega, et al. as disclosing optional skin care agents, with no guidance provided by Vega, et al. that suitable immobilizing agents are listed in any of those patents or applications, and then select the '560 patent from this list, again with no guidance by Vega, et al. to select this particular patent from the laundry list of thirteen patents and applications. One skilled in the art must then incorporate a high molecular weight polyethylene glycol as disclosed in the '560 patent into the composition as an immobilizing agent. Again, all this must be done with **no guidance** by Vega, et al. as to the benefits of a composition comprising the specific combination of from about 1% (by weight) to about 40% (by

weight) of a compatibilizing agent and an immobilizing agent that is a high molecular weight polyethylene glycol having the formula:  $H(OCH_2CH_2)_xOH$ , wherein x is the degree of ethoxylation and is an average value of at least about 20 moles. Applicants respectfully submit that it is simply not obvious to make such a combination based on the lack of guidance provided by the disclosure of Vega, et al.

In the Response to Arguments of the current Office action, on pages 10-11, the Office merely provides the conclusory statement that "a person of ordinary skill in the art would have motivation to use a high molecular weight polyethylene glycol when using Vega, et al. because Vega, et al. explicitly discloses high molecular weight polyethylene glycols in absorbent articles by incorporating U.S. Patent No. 4,556,560 by reference. . . ." The Office, however, still fails to provide any motivation at all for a person having ordinary skill in the art to modify Vega and incorporate a high molecular weight polyethylene glycol as disclosed in the '560 patent into the composition as an immobilizing agent over any other compounds described in '560 or the other 12 patents incorporated by reference.

With all due respect, it appears that the Office has used impermissible hindsight analysis and reconstruction when modifying the cited reference. What is important is that there is no guidance provided by Vega, et al. to arrive at the specific combination of from about 1% (by weight) to about 40% (by weight) of a compatibilizing agent and an immobilizing agent that is a high molecular weight polyethylene glycol having the

formula:  $\text{H}(\text{OCH}_2\text{CH}_2)_x\text{OH}$ , wherein x is the degree of ethoxylation and is an average value of at least about 20 moles in a composition to provide the moisturizing and lubricating composition having at least about 40% soluble/dispersible in deionized water at a temperature of about 80°C.

In light of the foregoing, Applicants respectfully submit that claim 1 is patentable over Vega, et al.

Claims 2-8, 10, 12-23 and 25-31 depend directly or indirectly from claim 1 and are thus patentable over the cited reference for the same reasons as set forth above for claim 1 as well as for the additional elements they require.

Independent claim 32 is similar to claim 1 and further requires the moisturizing and lubricating composition to comprise a dispersing agent. As such, claim 32 is patentable over the cited references for the same reasons as set forth above for claim 1, as well as for the additional limitations it requires.

Claims 33, 35-40, 42, 44-56, and 58-61 depend directly or indirectly from claim 32 and are therefore patentable over the cited reference for the same reasons as set forth above for claim 32 as well as for the additional elements they require.

Claim 62 is similar to claim 1 and further requires the immobilizing agent to be a high molecular weight polyethylene glycol selected from the group consisting of PEG 3350, PEG 6000, PEG 8000, and PEG 10,000. As such, claim 62 is patentable over the cited reference for the same reasons as claim 1, as well as for the additional limitations it requires.

Claims 63-69, which depend from claim 62, are patentable over the cited reference for the same reasons as claim 62, as well as for the additional limitations they require.

Claim 70 is similar to claim 1 and further requires the humectant to be selected from the group consisting of N-Acetyl ethanolamine, urocanic acid, aloe vera gel, arginine PCA, chitosan PCA, copper PCA, corn glycerides, dimethyl imidazolidinone, fructose, glucamine, glucose, glucose glutamate, glucuronic acid, glutamic acid, glycereth-7, glycereth-12, glycereth-20, glycereth-26, honey, hydrogenated honey, hydrogenated starch hydrolysates, hydrolyzed corn starch, lactamide MEA, lactic acid, lactose lysine PCA, mannitol, methyl gluceth-10, methyl gluceth-20, PCA, PEG-2 lactamide, PEG-10 propylene glycol, polyamino sugar condensate, potassium PCA, propylene glycol citrate, polyamino acid, polysaccharide, saccharide hydrolysate, saccharide isomerate, sodium aspartate, sodium lactate, sodium PCA, sorbitol, TEA-lactate, TEA-PCA, Urea, Xylitol, and mixtures thereof. Claim 70 is thus patentable over the cited reference for the same reasons as set forth above for claim 1, as well as for the additional limitations it requires.

**2. Rejections under 35 U.S.C. § 103(a) over Vega, et al. and Bowser, et al.**

Reconsideration is requested of the rejection of claims 1, 24, 32, and 57 as being unpatentable over Vega, et al. (U.S. Patent No. 6,153,209) in view of Bowser, et al. (U.S. Patent No. 5,342,976).

Claim 1 and Vega, et al. are discussed above.

Bowser, et al. disclose a composition suitable for topical application to human skin. The composition comprises an active ingredient that can control skin barrier functions; particularly, the active ingredient can moisturize and treat skin surfaces that have become excessively dry, fissured, eroded, or otherwise damaged. Specifically, the active ingredient is (a) a long chain ~~ω~~-hydroxy fatty acid or a carboxy-substituted derivative, (b) an hydroxy- or epoxy-derivative of an essential fatty acid, or an ester formed between (a) and (b). The composition further comprises a vehicle to enable the active ingredient to be conveyed to the skin in an appropriate dilution. One suitable vehicle is water. In one embodiment, the compositions can be used in a liquid-impregnated fabric, such as a tissue wipe.

Claim 1 is patentable over Vega, et al. for the reasons set forth above. In particular, Vega, et al. fail to disclose a composition comprising the specific combination of an immobilizing agent that is a high molecular weight polyethylene glycol having the formula:  $H(OCH_2CH_2)_xOH$ , wherein x is the degree of ethoxylation and is an average value of at least about 20 moles, from about 1% (by weight) to about 40% (by weight) of a compatibilizing agent, and wherein the composition is at least about 40% soluble/dispersible in deionized water at a temperature of about 80°C. Bowser, et al. fail to overcome these deficiencies. In particular, Bowser, et al. fail to disclose a high molecular weight polyethylene glycol and the level of solubility/dispersibility as set forth in claim 1. The

combination of Bowser, et al. and Vega, et al. thus fails to disclose or suggest each and every limitation of claim 1.

Furthermore, as noted above, in establishing obviousness, the Office must show references that teach all of the claimed limitations along with some reason, either in the references themselves or in knowledge generally available to one skilled in the art, to modify and/or combine the references and arrive at the claimed subject matter. The mere fact that the references can be modified and combined to arrive at the claimed subject matter does not render the resultant combination obvious, unless the prior art also suggests the desirability of the combination. In re Mill, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). A close reading of the cited references clearly indicates that one skilled in the art would not have been so motivated and, without Applicants' disclosure as a blueprint (which the Office had the benefit of utilizing), such a combination of the compositions of the Vega, et al. and the Bowser, et al. references would not have been made.<sup>10</sup>

Applicants assert that there is nothing in the cited references or in the general knowledge of one ordinarily skilled in the art that would lead one skilled in the art to combine the

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<sup>10</sup> M.P.E.P. § 2142 further provides that in order to reach a proper determination under 35 U.S.C. § 103(a), the Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. Knowledge of Applicants' disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences." The tendency to resort to "hindsight" based upon Applicants' disclosure is often difficult to avoid due to the very nature of the examination process. However, as stated by the Federal Circuit, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. Grain Processing Corp. v. American-Maize-Products, Co., 840 F.2d 902, 904 (Fed. Cir. 1988).

Vega, et al. and Bowser, et al. references to arrive at Applicants' claim 1. Specifically, neither Bowser, et al. nor Vega, et al. disclose any level of solubility/dispersibility, let alone the specific level disclosed by Applicants' claim 1. Moreover, even if Bowser, et al. or Vega, et al. did disclose a level of solubility/dispersibility of the moisturizing and lubricating composition of Applicants' claim 1 (which, as discussed above, Applicants argue they do not), one having ordinary skill in the art would still not be motivated to combine Bowser, et al. with Vega, et al. to arrive at the absorbent product of Applicants' claim 1.

Specifically, a close reading of the Bowser, et al. reference actually teaches away from the combination of the Vega, et al. and Bowser, et al. references. As noted above, it is desirable for the compositions of Vega, et al. to have a melt profile such that 2-50%, and preferably 3-25% of the components are liquid at room temperature (20°C).<sup>11</sup> Furthermore, Vega, et al. state that it is desirable for the emollient component of the compositions used therein to be substantially **anhydrous**. Vega, et al. define "substantially anhydrous" to mean the emollients or mixtures thereof typically have a water content of less than about 10%, preferably less than about 5%, more preferably less than about 1%, and most preferably less than about 0.5% by weight of the emollient component. It should be noted that as the emollients are only one component of the composition in Vega, et al., specifically, making up 5-95% by weight of the composition, the amount of water by weight of

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<sup>11</sup> See Vega, et al. at col. 15, lines 14-15.

composition is even less. For example, even if the maximum of less than about 10% water was used with the emollient in the composition, water would be present in the composition as a whole in an amount of less than about 0.5 to 9.5%.

Vega, et al. further state that the substantially anhydrous character of the emollients avoids overhydration of skin and the wicking effect of the absorbent core, which may draw emollient components toward the core, interfering with absorbency, and keeping the emollient away from the topsheet surface and the wearer's skin.<sup>12</sup>

In contrast, the Bowser, et al. composition can comprise from about 15% to 99.9999% by weight water and, preferably from 50% to 99.5% by weight water. As such, there is no apparent reason why one skilled in the art would combine the components of the Bowser, et al. reference, which are desirably incorporated into compositions having large amounts of water, e.g., at least 15% by weight water and, more preferably at least 50% by weight water, with the compositions of Vega, et al., which desirably limit the amount of components (such as water) that are liquid at room temperature, e.g., preferably comprise less than 50%, and more preferably 3-25% components that are liquid at room temperature. This is particularly true in view of Vega, et al.'s concerns that the presence of water in the emollient component of the compositions may result in overhydration of the skin and may affect absorbency of the article. As such, there is no motivation or apparent reason to

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<sup>12</sup> See Vega, et al. at col. 18, lines 35-50.



combine the cited references to arrive at each and every limitation of Applicants' claim 1.

Moreover, the Examiner cites Titanium Metals Corp. of America v. Banner, 778 F.2d 775 (Fed. Cir. 1985), on pages 12-13 of the instant office action, regarding the amount of water disclosed in the Vega and Bowser references, stating that "a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties." Accordingly, the Examiner asserts that because Vega, et al. disclose a water content of 10% in the emollient and Bowser, et al. disclose a water content as low as 15%, that the ranges are "close enough" for one skilled in the art to combine the references. Applicants respectfully disagree.

As noted above, it should be recognized that the maximum water in Vega, et al. is less than about 10% **by weight of the emollient**, and thus, water would be present by weight of the composition in even lesser amounts. Specifically, the emollient in Vega, et al. can be present in an amount of from about 5% to about 95% of the skin care composition, and, most preferably, from about 30% to about 75%. Thus, the maximum water amount would be at most, from 0.5% to about 9.5% of the skin care composition, and, most preferably, from about 3% to about 7.5%. All of these amounts are significantly less than the water amount disclosed by Bowser, et al.

Furthermore, the case the Examiner cites is further explained in MPEP § 2144.05, which states:

Court held as proper a rejection of a claim directed to an alloy of "having .08% nickel,

0.3% molybdenum, up to 0.1% iron, balance titanium" as obvious over a reference disclosing alloys of 0.75% nickel, 0.25% molybdenum, balance titanium and 0.94% nickel, 0.31% molybdenum, balance titanium.

Applicants submit that the ranges determined to be "close enough" in that case differed by, at most, 0.05%. In the instant case, however, the Examiner asserts that a reference that discloses at most 10% water (which, is incorrect as noted above) and a reference that discloses at least 15% water are "close enough" to make a determination that one skilled in the art would not be discouraged from combining the references. Applicants submit that the difference in the disclosed ranges in the instant case is much larger than that of the case cited by the Examiner. Specifically, one skilled in the art would need to be motivated to increase the maximum amount of water disclosed in the Vega, et al. reference by at least 50% in order to arrive at the minimum amount of water disclosed in the Bowser, et al. reference. One skilled in the art simply would not and could not be so motivated especially in light of Vega, et al.'s disclosure that the emollient component of their composition is "substantially anhydrous."

Furthermore, Applicants acknowledge that column 25, lines 53-56 of Vega, et al. disclose that the compositions can comprise other components, such as water, however, nowhere does Vega, et al. give any indication of a suitable amount of water that may be added such that the emollient component of the composition remains substantially anhydrous, and the overall

composition retains its desired results. As such, claim 1 is patentable over the cited references.

Claim 24 depends from claim 1 and is thus patentable over the cited references for the same reasons as set forth above for claim 1 as well as for the additional elements it requires.

Independent claim 32 (which, as discussed above, is similar to claim 1) and claim 57, which depends therefrom, are patentable over the cited references for the same reasons as set forth above for claim 1, as well as for the additional elements they require.

### **3. Newly Added Claims 71-74**

Claims 71-74 have been added by this Amendment. Specifically, claims 71-74 require the compatibilizing agent to be present in an amount of from about 15% (by weight) to about 20% (by weight) of the moisturizing and lubricating composition in the absorbent product of claims 1, 32, 62 and 70, from which claims 71-74 respectively depend. As shown in Tables 1-5 in paragraph [0081] of the instant specification, when the compatibilizing agent is present in an amount from about 15% to about 20%, Applicants were able to obtain critically favorable results with regard to the moisturizing and lubricating composition within the absorbent product. As such, claims 71-74 are patentable over the cited references for the reasons set forth above for claims 1, 32, 62 and 70, respectively, as well as for the additional elements they require. Specifically, as noted above, neither reference discloses nor suggests the range of compatibilizing agents disclosed by Applicants.

**4. Double Patenting Rejections**

Claims 1-8, 10, 12-33, 35-40, 42, and 44-69 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-59 of copending Application No. 10/659,862.

Applicants note this rejection is in fact a provisional obviousness-type double patenting rejection since U.S. Patent Application No. 10/659,862 has not yet issued as a patent. Applicants will address the merits of these rejections, as appropriate, if the listed application issues as a patent before the application at hand.

27839-725  
(K-C 19,378B)  
PATENT

**CONCLUSION**

In light of the foregoing, Applicants request withdrawal of the rejections of claims 1-8, 10, 12-33, 35-40, 42, and 44-70 and allowance of all pending claims. The Commissioner is hereby authorized to charge any government fees which may be required during the entire pendency of this application to Deposit Account No. 01-2384.

Respectfully Submitted,

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